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10/705,437

11/10/2003

Ken'Ichi Imamatsu

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KATTEN MUCHIN ROSENMAN LLP
575 MADISON AVENUE
NEW YORK, NY 10022-2585

EXAMINER

YAARY, MICHAEL D

ART UNIT

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/705,437
Filing Date: November 10, 2003
Appellant(s): IMAMATSU, KEN'ICHI

Dexter T. Chang
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 03/04/2009 appealing from the Office action mailed 04/04/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,848,064

COWAN

12-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13, 17-18, 22-26, 28-31, 33-45 are rejected under 35 U.S.C. 102(a, b) as being anticipated by **Cowan** (USPN 5,848,064).

Claim 13

Cowan discloses a software supplying device comprising:

Art Unit: 2193

a memory storing software being downloaded by a radio terminal device (*figures 1 and 2; column 2, lines 35-40*); and

a communication unit that is adapted to notify said radio terminal device of a number of divided blocks for transmitting of said stored software (*column 8, lines 57-59; column 11, lines 24-35; indicating a total number of files through the list*), to receive from the radio terminal device a request corresponding to each divided block to transmit the respective divided block, and to transmit in response to said respective requests transmits said respective divided blocks to the radio terminal device on a block-by-block basis (*column 11, line 36 to column 12, line 34, specifically column 12, lines 7-11; column 13, lines 47-67; requesting each file of the list*).

Claim 17

Cowan discloses a radio terminal comprising: a radio communication unit communicating with a software supplying device; a memory storing software presently involved in operations (*figures 1 and 2; column 2, lines 35-40*); and a controller stopping a download of software from said software supplying device when the controller detects an operation for responding to an incoming call (*column 14, lines 1-9, terminates if hung up*). Claims 39-41 correspond to claim 17 and are disclosed in a corresponding manner.

Claims 18, 22-24, 26, 28-30, 33-38 and 42-45

The limitations of claims 18, 22-24, 26, 28-30, 33-38 and 42-45 correspond to the limitations of claim 13 and as such are disclosed in a corresponding manner.

Claims 25, 31

Cowan discloses the radio terminal of claim 24, wherein the radio terminal starts to communicate with the software supplying device when a certain time elapses after a predetermined operation to the radio terminal (*column 14, lines 1-9*). Claim 31 corresponds to claim 25 and is disclosed in a corresponding manner.

Allowable Subject Matter

Claims 19 and 32 are allowed.

(10) Response to Argument

Appellant's arguments have been fully considered but they are not persuasive. Appellant argues that Cowan fails to disclose the claimed features of notifying or transmitting a "number," "quantity," or "value N" of "divided blocks" or "data blocks" "being downloaded" or "to be downloaded" for updating software at a radio terminal device; and "stopping a download" of said software from said software supplying device when "the controller detects an operation for responding to an incoming call," as recited in claim 17.

Examiner respectfully disagrees with the arguments. It is clearly shown in the recited sections of Cowan, that when using the broadest reasonable interpretation, the claimed limitations are taught. Cowan (column 11, lines 24-45) teaches of a packet definition being formed containing a header and a package definition field. The field

Art Unit: 2193

includes a version identifier and a *list of file names* relating to the memory, file transfer, file types, etc. Further, (column 11, lines 46-51) it is disclosed of stepping through each file in the list transmitted for downloading and transferring of the file. Thus, transmitting of said stored software based on a number of divided blocks. The feature of "a number" or "value N" is an inherent feature in the list; as the packet contains a list of files, thus this inherently equates to a certain number or quantity.

Cowan also clearly discloses (column 14, lines 1-9), as cited in the rejection, detection for any operation for responding to an incoming call. The cited section teaches how the mobile terminal avoids being hung up do to failure by retransmitting the packet a number of times. In addition, Cowen teaches the terminating of the download based on a lack of memory, RF link failure or host computer failure, etc. (col. 12, lines 43-50). This would include all operations associated with the mobile terminal, including calls. There is sufficient disclosure of a condition for stopping a download. In conclusion, the claims in the current form, when taking the broadest reasonable interpretation, are clearly read upon by the teachings of Cowan.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 2193

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/M. Y./

Examiner, Art Unit 2193

Conferees:

/Lewis A. Bullock, Jr./
Supervisory Patent Examiner, Art Unit 2193

/Wei Y Zhen/

Supervisory Patent Examiner, Art Unit 2191